1948.

**File No.** O. Harijans

Legal Department - 4/8

**K** **BRANCH**

**Subject:—** C. Harijans

Opinions under the Bombay Harijans (removal of Social Disabilities) Act. 1946

P 4/5/48

**File No.** O Harijans/48

Gen. 194 6.

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Office of the R.L.A.

Discrimination by Hotel Keeper.

Bombay Harijan Removal of Social (Disbilites) Act, 1946-Sections 4 and 7(b)

This is clearly a case of discrimination and the hotel-keeper, Mr. Bhokare, can be prosecuted under section 7(b) read with section 4 of the Bombay Harijan (Removal of Social Disabilities ) Act, 1946.

Id/-P.H.L.
dt/-18/1/48/

Remembrancer of Legal Affairs.

U.R. to R. & I.D. No. M 534 dated 16th January 1948.

V.VK. 17/3/56/ 50.

The District Magistrate, Surat, in his weekly confidential report has stated that the temples of Mota Mandir, Govinji's Mandir, Lalluji's Mandir, Acharyaji's Mandir and Girdharjiés Mandir and Shastriji's Mandir remained closed for fear of entry of Harijans. In reply to the information called for by the R.L.A. in his U.R. to H.D. No. 148-Confl. dated the 3rd April 1948, the Secretary, H.D. has stated:

> "It has to be claimed that the temples are open to all Hindus. It will be for the accused to establish the point of restricted entry if they wish, to .The temples seem to be closed for all at least for general Darshan and not only for Harijans . They are, however, closed to all only to keepout the Harijans. The Harijans are prevented from going. There is nopther obstruction. There is noreport of any molestation."

The R.L.A. is requested to advise whether the managers of the temples which are closed can be prosecuted under section 4(1) of theBombay Harijan Temple Entry Act, 1947.

2. Section 3 of the Bombay Harijan Temple Entry Act, 1947, provides:-

> "Notwithstaning anything contained in theterms of any instrument of truse, the terms of a dedication, the terms of a sanad or a decree or ordeer of a competent court or any custom, usage or law for the time bein- in force to the contrary, every temple shall be open to Harigans for worship in the same manner and to the same extent as other Hindus in general and Harijans shall be entitled to bathe in or use the waters of any sacred tank, well, spring or watercourse in the same manner and to the same extent as other Hindus in general."

Section 4(1) prescribes penalty for those who prevent a Harijan from exercising any right conferred by this Act or molest or obstruct or cause or attempt to cause obstruction to a Harijan in theexercise of any rights. Reading these provisions together it is apparent that the prosecution willhave to prove firstly that the temple is open to Hindus in general and secondly the Harijan is prevented from exercising any right which

Hindus-.....

Hindus in general could exercise inrespect of such temple e. is m les ed or obstructed et . in theexercise of such ri h s. The Se re ary, H.D. appears to be of the view that it would be for the accused to prove that the temple is not open to Hindus in general. It is, however, a well established propositinn of criminal law that the burden of proving any essential ingredient of the offence is upon theprosecution and it willbe for the prosecution to pro e that the temple was open to Hindus in general- t seems that the te mples are being closed on the basis that they were provate temples to which the public had no right of ac ess. Whether this stand is correct or not is again a matter for evidence. "Temple" has been defined in the Act to mean a place, by whatever designation known, which is used as of right by, dedicated to or for the benefit of the Hindus in general other than Harijans as a place of public religious worship. The prosecution , therefore, will again be called upon to prove that the temples in questionpare either used as of right by Hindus in general or were dedicated to for the benefit of Hindus in general. rovided that these two essential facts can be establish-ed , it may then be possible to sustain a prosecution against the managers of the temples under section4(i) of the Act , for it may be feasible to demonstrate that the real underlying intention in keeping thetemples closed is to shut out the Harijans and thus to discriminate against them.

Id/- P.M.L.
dt/-16/4/

Remembrancer of Legal Affairs.

U.H. to H.D.(Spl) No. 165 -Confl. dated the 16th April 1948.

V.VK. 17/6/50/ 5c.

Office of the R.L.A.

I agree with theview taken by theBackward Class Officer, Bombay Province, Poona, that by displaying the boards, (1) "For High Caste Hindus" and (2) "Special facilities provided for high caste Hinudus", a person ca be said to have contravened theprovisions of section 4 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946 , which provides that no person in charge of a hotel shall impose any restricaion on a Harijan or act in a manner as to result in discrimination against him merely on the ground that he is a Harijan.

2. The questior whether by displaying the Hindi couplet on thewodden partition the persons renders himself liable for prosecution under section 153A of the Indian Penal Code is not quite free from doubt. The couplet by itself is capable o the construction that no aspersion is cast upon Chamars but that it merely ilustrates the well-known principle that even a go od thing (sandal wood ) suffers bycontact with a bad thing (leather). If thecouplet alone is displayed without the offence under section 153A.

ID/-
dt/-1-

Remembrancer of Legal Affairs

U.R. to S & E.D. No. 5556 , dated the 15th June 1948.

V.VK. 17/5/56/ 50.

No.7860

Office of the
Remembrancer of Legal Affairs,

Bombay Castle, 17th August 1948.

To

The Government Pleader,
High Court, Bombay.

Subject :- Cr. Revision Application No. 584 of 1948
Imperator
Vs.
Kalidas Amtharam.(Under Bom. Act 10 of 1947.)

Sir,

With reference to your letter No. 3233, dated the 27th July 1948, on the above subject, I have the honour to inform you that your proposal to engage the Advocate General on behalf of the Crown in the above matter is approved.

Yours Faithfully,

Id/-R.T.K.

For Remembrancer of Legal Affairs.

vvm. 17/5/56/ 50.

Judgment recorded by the High Court in Criminal Revision Application No . 584 of 1948 in thecase of Rex Vs Kalidas .Amtharam. (Original Accused).

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Mr. B.G.Thakor Advocate, for the Applicant.

The Advocate General with the Government Pleader for the Opponent.

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Coram: Chagla C.J. & Gajendragadkar J. 16th July 1949.

Oral Judgment (Per Chagla C.J.)

This is an application for revision against an order made by the Second Additional First Class Magistrate, Ahmedabad, rejecting the Petitioner's contention that the Act under which he was charged was invalid. That view was also upheld by the learned Session Judge, Ahmedabad The accused was charged for an offence under Section 7 of the Bombay Harijan (Removal of Scoial Disabilities) Act 1946, for having refused to serve tea to a Harijan in his tea shop , and the co tention raised by the applicant was that this Act was ultra vires of the Provincial Legislature. This contention was based on the argument that the subject of removal of social disabilities of Harijans does not form part either of List I or List III in the 7th Schedule to the Governmen of India Act, and therefore the Provincial Legislature was not competent to legislate on this subject , The learned Magistrate took the view that as this act had received the assent of the Governor General, the Governo General by implication had constituted this subject as a new subject on which the Provincial Legislature could legislate, that subject not having been originally included in List II or List III in the 7th Schedule. The Learned Sessions Judge rightly, in our opinion did not accept that contention because there has been no public

notification by the Governor General as required by Section 204 of the Government of India, Act, The learned Sessions Judge took the view that the subject of the Act was covered by item 28 in List II , which item is "Inns and innkeepers", Now, in construing the Lists in theGovernment of India Act We must not overlook the fact that this is a Parliamentary Legislation and Parliament was using language whichis well known and understood in English logal phraseology, and the expression "Inns and innkeepers" has a definite connotation in English, Law . In out opinion, it wohld not be correct to say that the law regulation restaurants or tea shop keepers would fall in the category of Inns and Innkeepers, But with respect to thelearned Sessions Judge, it is taking too narrow a view of this Legislation to say that all that it did was it regulated the busine of a tea shop keeper and prohibited the tea shop keeper from refusing to serve tea to a Harijan. In ~~say~~ any case , it is not necessary finally to decide this question as to whether the learned Sessions judge on this point is right or not because, in out opinion, the subject of the impugned Legislation clearly falls under item 1 of List III which is the concurrent List. That item is "criminal law including all matters included in the Indian Penal Code at the date of the passing of this Act, but encluding ~~xxxxxx~~ offences against laws with respect to any of the matters specified in List I or List II and excluding theuse o His Majesty's naval, military and air forces in aid of the civil power." Therefore, the Provincial Legislature c oncurrently with the Federal legislature is competent to legislate with regard to all matters included in the Indian Pennal Code, They are also competent to legislate with regard toall matters relating to criminal law so long as they do not affect offences a gainst laws whichare enumeratod in List I and List II,

Now, the whole basis of Mr. Thakor's argument is that the subject matter of this legislation does not fall List I or List II and therefore, in out opinion, it is competent to the Provincial Legislature to create a new office with regard to a subject which is not dealt with in List I or List II. Now, turning to theScheme of the impugned legislation, the preamble states that the legislation is passed in order to provide for the removal of the social disabilitiès of Harijans . Section 3 enumerates what are the disabilities of the Harijans and how they should be got rid of and declares their riths in those respects. Secetion4 refers to he discriminations exercised against Harijans . Section 5 callsupon the Courts not to recognise any custom or usage imposing any Civil disability on any Harijan . Section 6 gives a direction to legal authorities not to recognise any coutom or usage imposing anycivil disability on theHarigans. And section 7 is the penal section which provides for penalties for offences committed by anyone who contravenes the provisions of the Act. Now, reading this statute as a whole, it is clear that it was theview of theLegislature that social disabilities from which the Harijans suffer should be removed. According to the Legisalature, anyone who was privy to the continuance of these social disabilities should be punished, and theLegislature also took the view that the only way that the Harijans stauts and position can be improved was bey punished those who continued to inflict disabilities upon Harijans. Therefor, in passing this Act, what the Legislature has done is to add to the body of Criminal Law. It has created not offieces . According to Mr. Thakor, the pith and substence of this Act is really to create rights in favour of Harijans and accoring to him that is a subject which does not find a place in any of thethree lists. Mr. Thakor has further argued that if item 1 in List III was to be interpreted in the manner in which we are doing, theresult would be that the Legislaturecould legislatte on any of the

the subjects not mentioned in List I and List II merely cross in a new offence and by including in thestatute a penal clause. Now, it is well known that the while scheme of the Government of India Act is to make all thethree Lists exhaustive. Parliament did not follow themodel of the American, the Australian, or the Canadian constitution, Its intention was, to enumerate, as far as possible, allpossibel subjects of ligislation and to include them in one of the three lists, . The residual section 104 was not intended tobe resorted to ordinarily. It was enacted nearly for thepurpose of emergency or in case some subject had been overlooked by inadvertence. Therefor, thereis nothing wrong in giving an interpretation to item 1 in List III which would enable the Provincial Legislature to pass ligislation with reard to social reforms, The only way the Legislature can carry out social reforms is by punishing those who do not conform to the standards laid down by theLegislature. In this case the Legislature says the Harijans shall be treatedas equal citizens with theHindus and if anyone does not conform to that he shallbe pubishe-- Similarly, in other matters of social reforms theLegislature may also impose penalties upon those who do not conform to the view taken by the Legislature .

In our opinion, therefore, this particular Act falls in item 1 of List III and it was competent to the Legislature to pass this piece of legislation. Therefore, the contention urged by the applicant must fail and we must discharge the rule.

Certificate granted to go to the Federal Court.

.....V.VK.....

17/5/56/ SC.

Office of the R.L.A.

Sheth A.G.
Charity Trust.
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Bombay Harijan
( R.S.D.) Act,
1946.

If, as appears to be the case , the Sehh Acharatlal Girdharlal Charity Trust, Ahmedabad, was created for the benefit of the Hindus generally, the Harijan boys would be entitled to enjoy the benefits of the Trust.

Id/-P.M.L.
dt/-28/11/

Remembrancer of Legal Affairs.

U.R. to E & I.D. No. 11104 , dated the 26th November 1948.

V.VK. 17/5/56/
5C.